



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Lloyd B. Bennett
Mimosa Mobile Home Park
PO Box 248
Lashmeet, WV 24733

DATE: December 1, 2011

ORDER NO.: 7224

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Lloyd B Bennett, (hereinafter, "Mr. Bennett").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Mr. Bennett operates a sewage treatment facility referred to as Mimosa Mobile Home Park located near Lashmeet, Mercer County, West Virginia. Mr. Bennett was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550475 on September 3, 2004. On July 15, 2011, the permit was reissued.
2. On January 29, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, the following violations of the terms and conditions of Mr. Bennett's WV/NPDES permit were observed and documented:
 - a. No chlorine tablets in the disinfection system. No SO-2 tablets in the de-chlorination unit (Section F.1.).
 - b. Permittee not meeting limits for Fecal Coliform and Dissolved Oxygen (Section A.2.).

Promoting a healthy environment.

- c. Muskrat damage to pond walls degrading long-term stability of structure (Section F.1.).
- d. Outlet marker is missing (Section E.13.).

As a result of the aforementioned violations, Notice of Violation No. I-10-28-1/29-MDP-3 was issued to Mr. Bennett.

- 3. On March 14, 2011, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-December 2010. During this review, the following violations of the terms and conditions of Mr. Bennett's WV/NPDES permit were observed:
 - a. Twenty-two (22) exceedances of Mr. Bennett's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Mr. Bennett's WV/NPDES permit (Section A.2.). These exceedances can be further defined as:
 - i. Minor violations-7
 - ii. Moderate violations-10
 - iii. Major violations-5
- 4. On April 25, 2011, a meeting was held between Mr. Bennett and WVDEP personnel to discuss the terms of this Order. Subsequent to this meeting, Mr. Bennett submitted financial documents to WVDEP which were used in performing an economic analysis to determine Mr. Bennett's ability to pay the assessed penalty.
- 5. On October 18, 2011, WVDEP personnel received correspondence from Mr. Bennett concerning the terms of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

- 1. Mr. Bennett shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
- 2. Within twenty (20) days of entry of this Order, Mr. Bennett shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mr. Bennett will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Mr. Bennett's permit violations, Mr. Bennett shall be assessed a civil administrative penalty of nine thousand one hundred fifty dollars (\$9,150) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$762.50 due on or before February 1, 2012.
Payment 2 in the amount of \$762.50 due on or before March 1, 2012.
Payment 3 in the amount of \$762.50 due on or before April 1, 2012.
Payment 4 in the amount of \$762.50 due on or before May 1, 2012.
Payment 5 in the amount of \$762.50 due on or before June 1, 2012.
Payment 6 in the amount of \$762.50 due on or before July 1, 2012.
Payment 7 in the amount of \$762.50 due on or before August 1, 2012.
Payment 8 in the amount of \$762.50 due on or before September 1, 2012.
Payment 9 in the amount of \$762.50 due on or before October 1, 2012.
Payment 10 in the amount of \$762.50 due on or before November 1, 2012.
Payment 11 in the amount of \$762.50 due on or before December 1, 2012.
Payment 12 in the amount of \$762.50 due on or before January 1, 2013.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Mr. Bennett hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Mr. Bennett agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Mr. Bennett does not admit to any factual and legal determinations made by the Director and

reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Mr. Bennett other than proceedings, administrative or civil, to enforce this Order.

2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Mr. Bennett shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Mr. Bennett becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Mr. Bennett intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Mr. Bennett (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Mr. Bennett of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Mr. Bennett to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Mr. Bennett, its successors and assigns.

7. This Order shall terminate upon Mr. Bennett's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Lloyd B. Bennett
Mimosa Mobile Home Park

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised November 2010